

Machinery and equipment used primarily (over 50% of the time) in the manufacturing or assembling of tangible personal property for wholesale or retail sale or lease is exempt from Retailers' Occupation Tax and Use Tax liability. See 86 Ill. Adm. Code 130.330. (This is a PLR).

December 15, 2000

Dear Xxxxx:

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>), is in response to your letter of November 8, 2000. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of the enclosed copy of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to COMPANY for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither COMPANY nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

In your letter, you have stated and made inquiry as follows:

I request a Private Letter Ruling for COMPANY to confirm that the cogeneration machinery and equipment described in this letter qualifies as exempt manufacturing machinery and equipment exemption under the Illinois Retailers' Occupation Tax and Illinois Use Tax. My Power of Attorney is attached.

This matter is not under audit or litigation. The Department has previously ruled favorably on a similar issue for COMPANY. The Private Letter Ruling was 90-0774. No similar ruling request has been submitted but withdrawn prior to the issuance of a ruling. I am unaware of any authority contrary to the position stated in this request.

FACTS

COMPANY is a Delaware corporation with its principal headquarters at CITY, Illinois. COMPANY has a manufacturing plant located in CITY1, Illinois. The CITY1 plant produces excavators and wheelloaders. COMPANY intends to install a cogeneration facility at the plant to produce electricity and process steam. At least 80% of the electricity and steam produced by the cogeneration facility will be used in the operation of machinery and equipment manufacturing process. The major components of the cogeneration facility will include:

- two Solar Taurus 70 gas turbine generator sets
- water treatment feedwater skid
- burner fuel control skid
- two Solar heat recovery steam generators
- piping

- auxiliary support system

The Illinois Retailers' Occupation Tax ('ROT') Act, Section 2-5, 35 ILCS 120/2-5(14), provides an exemption from the ROT for 'the sale of machinery and equipment that will be used by the purchaser, or a lessee of the purchaser, primarily in the process of manufacturing or assembling tangible personal property for wholesale or retail sale or lease.' The Illinois Use Tax ('UT') Act, Section 3-5, 35 ILCS 105/3-5(18) contains a similar exemption.

ROT Regulation 130.330(d) provides that 'machinery which is used primarily in an exempt process and partially in a nonexempt manner would qualify for the [manufacturing machinery and equipment] exemption.' ROT Regulation 130.330(d) further provides that machinery or equipment is used primarily in manufacturing if more than 50% of its use is in the manufacturing or assembling process.

The Department has previously ruled that machinery and equipment used in a cogeneration facility qualifies for the manufacturing machinery and equipment exemption if the electricity generated is primarily used in the manufacturing process. PLR 86-1043; PLR 90-0774. A similar ruling was issued regarding an electrical substation. PLR 87-0788.

RULING REQUESTED

COMPANY submits that the manufacturing machinery and equipment used in the operation of the cogeneration facility described above qualifies for the manufacturing machinery and equipment exemptions under the Illinois ROT and UT. Therefore, COMPANY requests a ruling confirming that the machinery and equipment used in the operation of the cogeneration facility at its CITY1 plant will not be subject to the Illinois ROT and UT.

Please contact me if you have any questions or require additional information in order to provide the ruling requested.

As indicated in our earlier Private Letter Rulings, machinery and equipment used primarily (over 50% of the time) in the manufacturing or assembling of tangible personal property for wholesale or retail sale or lease is exempt from Retailers' Occupation Tax and Use Tax liability. See for example the enclosed copy of 86 Ill. Adm. Code 130.330.

Your letter states that the equipment listed in your letter will be used as part of a cogeneration facility to create electricity and steam, and that at least 80% of that electricity and steam will be used in the operation of the machinery and equipment in COMPANY's manufacturing plant located in CITY1, Illinois. You also informed me by telephone that the 80% amount of electricity and steam referenced in your letter is to be used by machinery and equipment that qualifies for the manufacturing machinery and equipment exemption that is located in the CITY1, Illinois plant. In addition, you also informed me that COMPANY will own the cogeneration facility and it will be located on the premises owned by COMPANY at its CITY1, Illinois plant.

Based upon these representations, the machinery and equipment described in your letter that is used in the operation of the cogeneration facility located at the CITY1, Illinois plant qualifies for the

Manufacturing Machinery and Equipment Exemption from Retailers' Occupation Tax and Use Tax liability.

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

I hope this information is helpful. If you have questions regarding this Private Letter Ruling you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at www.revenue.state.il.us or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Terry D. Charlton
Associate Counsel

TDC:msk
Enc.